

Local 4171

**American Postal Workers Union Local 4171 (United States Postal Service) and Fidel Sabedra. Case 16-CB-3903(P)**

May 8, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by Fidel Sabedra, an individual, on August 21, 1991, the General Counsel of the National Labor Relations Board issued a complaint on September 25, 1991, against American Postal Workers Union Local 4171 (the Respondent or Union), alleging that it has violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 18, 1991, the General Counsel filed a Motion for Summary Judgment. On November 22, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel by letter dated October 25, 1991, notified the Respondent that unless an answer or request for extension of time was received by November 8, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The United States Postal Service (Employer or USPS), an independent establishment of the Executive Branch of the Government of the United States, operates various facilities throughout the United States, including a facility in Victoria, Texas, in the performance of its basic function of providing postal services to the United States. USPS is, and has been at all times material, subject to the jurisdiction of the Board in unfair labor practice proceedings under the Act pursuant to the provisions of Section 1209 of the Postal Reorganization Act (PRA). The Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The American Postal Workers Union, AFL-CIO (APWU), by virtue of Section 9(a) of the Act, has been the exclusive representative for the purpose of collective bargaining for the employees of the USPS in the following unit:

Postal clerks nationwide excluding all other employees, managerial employees, professional employees, Postal Inspection Service employees, guards, watchmen and supervisors as defined in the PRA and/or the NLRA.

The Respondent has been an agent for the APWU for various purposes, including processing grievances at steps one and two under successive collective-bargaining agreements between the USPS and the APWU, the most recent of which was effective from July 21, 1987, through November 20, 1990. The most recent agreement provides a procedure for voluntary dues deduction, dues-deduction revocation procedures, and a grievance and arbitration procedure.

On April 16, 1991, the Charging Party, an employee in the bargaining unit described above, filed a form requesting revocation of his dues-deduction authorization with the USPS and the Respondent.

On May 27, 1991, the Charging Party requested Union President Carl Prince to file a grievance over the USPS's continuation of his dues deductions subsequent to his revocation of authorization, seeking compensation for pay periods 10, 11, and 12, in 1991.

On July 16, 1991, the Respondent, through its president, Carl Prince, without consultation with the Charging Party, resolved the grievance by agreeing with the USPS that, on a nonprecedent basis, no articles of the collective-bargaining agreement were violated and that the Charging Party was not entitled to any monetary compensation by

the USPS. The Respondent resolved the grievance against the Charging Party arbitrarily and because the Charging Party refused to continue to pay dues to the Respondent and elected not to be a member of the Respondent.

The Respondent has refused to represent fairly the Charging Party for arbitrary, unfair, and invidious reasons and in breach of the fiduciary duty owed to the employees it represents.

By the acts and conduct described above, the Respondent has violated Section 8(b)(1)(A)<sup>1</sup> of the Act.

#### CONCLUSIONS OF LAW

By resolving Charging Party Fidel Sabedra's grievance arbitrarily and because he refused to continue to pay dues to the Respondent and elected not to be a member of the Respondent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that the Respondent reimburse to the Charging Party the dues improperly deducted for pay periods 10, 11, and 12, 1991, after he revoked his dues-deduction authorization, plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union Local 4171, Victoria, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to represent fairly Fidel Sabedra, or any other employee, for arbitrary, unfair, and invidious reasons and in breach of the fiduciary duty owed to the employees it represents.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse to Fidel Sabedra the dues improperly deducted for pay periods 10, 11, and 12, 1991,

<sup>1</sup> Because the General Counsel did not allege that the Respondent caused or attempted to cause the Employer to discriminate against the Charging Party, we will dismiss the complaint insofar as it alleges an 8(b)(2) violation.

after he revoked his dues-deduction authorization, plus interest, as set forth in the remedy section of this decision.

(b) Post at all meeting halls and places where notices to its members and other employees in the bargaining unit are customarily posted copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 16 for posting by the Employer at its place of business in Victoria, Texas, in places where notices to employees are customarily posted, if the Employer is willing to do so.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to represent employees fairly for arbitrary, unfair, and invidious reasons and in breach of our fiduciary duty to the employees we represent.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse to Fidel Sabedra the dues improperly deducted for pay periods 10, 11, and 12, 1991, after he revoked his dues-deduction authorization, plus interest.

AMERICAN POSTAL WORKERS UNION  
LOCAL 4171